SUPREME COURT, U. S.

APR 13 1974

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1453

AD HOC COMMITTEE ON JUDICIAL ADMINISTRATION et al.,
PETITIONERS,

v.

COMMONWEALTH OF MASSACHUSETTS et al.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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Blanchard Press, Inc., Boston, Mass. — Law Printers

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Opinions Below

The opinion of the United States District Court for the District of Massachusetts is reported at 358 F. Supp. 953 (D. Mass. 1973), and is set forth in Appendix A to the Petition for a Writ of Certiorari. The opinion of the

United States Court of Appeals for the First Circuit is reported at 488 F.2d 1241 (1st Cir. 1973), and is set forth in Appendix B to the Petition.

Statement of the Case

The petitioners, an unincorporated association of unnamed attorneys and an elderly plaintiff in a civil tort action pending in the Massachusetts Superior Court (Petition p. 16) brought a complaint on behalf of a class consisting of "all persons in the Commonwealth of Massachusetts" (*Ibid.*) against the Commonwealth itself, the General Court or Legislature, and Francis W. Sargent in his capacity as Governor of the Commonwealth (*Id.* p. 15). They alleged that the respondents have failed to provide court facilities, judges, clerical personnel and other facilities to relieve congestion in the state trial courts; that criminal defendants have been unable to obtain speedy trials; that civil litigants are required to wait two years for a trial of their cases; and that the plaintiff attorneys have been deprived of a forum in which to practice their profession (*Id.* at 17). The petitioners claim the actions of the respondents violate their rights under the Sixth and Fourteenth Amendments to the Constitution of the United States (*Id.* at 15). The relief sought was an order to the respondents to provide for additional court facilities, more judges and clerical personnel and to implement such programs with adequate funding (*Id.* at 19).

The respondents moved to dismiss on a number of grounds (Petition at 16-17, fn. 2), and the District Court dismissed the complaint for failure to state a justiciable cause of action and on the ground that the action against the respondents was barred by the Eleventh Amendment (*Id.* at 27-28). The Court of Appeals affirmed on the first ground (*Id.* at 31, 38).

Argument

The Petition Presents No Substantial Question Warranting Further Review By This Court

The decisions of the courts below are clearly correct, and present no reason for the necessity of further review in this Court. They conflict with no decisions of other circuits or with the law of Massachusetts. Indeed, as the Court of Appeals stated with respect to the relief sought by petitioners, "it would be both unprecedented and unseemly for a federal judge to attempt a reordering of state priorities" regarding the organization of the judicial branch (Petition at 35). The ordering of such relief would violate the principles of comity and Federalism cited by this Court as early as the opinion of Mr. Justice Chase in *Calder* v. *Bull,* 3 Dall. 386, 387 (1798), and continuing through *Oregon* v. *Mitchell,* 400 U.S. 112, 124-126 (1970) (Opinion of Black, J.) and *Younger* v. *Harris,* 401 U.S. 37, 44 (1971).

By joining as defendants the General Court, which is "empowered to enact legislation," and the Governor, who can approve legislation and appoint judges (Petition at 15-16) the petitioners have recognized that the political branches of the Commonwealth are the only bodies with the authority to restructure or enlarge the judicial branch. The relief sought would violate not only the Tenth Amendment, but also the First Amendment rights of the Governor and legislators to debate and vote upon matters before them without fear of restraint from any judicial tribunal, see *Tenney* v. *Brandhove,* 341 U.S. 367, 372-376 (1951). Moreover, petitioners ask this massive intrusion into areas reserved to the States in a case where the single named plaintiff has failed to allege that he has attempted to utilize state procedures to advance his case (Petition at 34, fn. 5).

and where both courts below were unable to formulate any method for a generalized identification of the duty asserted or a determination of its breach (*Id.* at 20-26, 32-35). See *Baker* v. *Carr*, 369 U.S. 186, 198 (1962); *cf. Gilligan* v. *Morgan*, 413 U.S. 1 (1973).

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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